

## REMARKS

The Examiner is respectfully thanked for the consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Claims 1-52 are now pending in this application. Claims 1, 19, 36, 39, 41, 44, and 51 are the independent claims.

### I. The “Response to Arguments”

The Office Action mailed on 23 October 2006 (the “present Office Action”) includes a section titled “Response to Arguments”. To the extent that the “Response to Arguments” section attempts to characterize or mischaracterize any portion of Applicant’s Reply to the Office Action dated 16 June 2006, such as via the numerous inaccuracies presented under allegations regarding Applicant’s “pattern” of argument (see, e.g., Page 19, paragraphs G and H), Applicant respectfully traverses, and instead respectfully requests a response to the specific arguments presented by Applicant.

### II. The Statutory Subject Matter Rejections

Each of claims 36-38 was rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The present Office Action fails to present any legal basis whatsoever upon which this rejection is based.

Applicant respectfully submits that Federal Circuit case law states that “[w]ithout question, software code **alone** qualifies as an invention eligible for patenting under these [35 U.S.C. 101] categories, at least as processes.” *Eolas Technologies Inc. v. Microsoft Corp.*, 399 F.3d 1325, 73 USPQ2d 1782 (Fed. Cir. 2005) (citing *In re Alappat*, 33 F.3d 1526 (Fed. Cir. 1994); *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352 (Fed. Cir. 1999); MPEP § 2106). Further, MPEP § 2106 IV.B.1.(a) states that “**a claimed computer-readable medium**

**encoded with a computer program** is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus **statutory**."

Independent claim 36, upon which each of claims 37 and 38 depends, recites *inter alia*, "[a] computer program product comprising a computer-readable storage medium having stored thereon a **computer executable markup language version of an industrial automation computer program**".

The present Office Action states, regarding this argument, at Pages 13-14:

*Applicant has submitted that the use of 'medium' followed by structural and functional interrelationship would permit the functionality to be realized, hence the claim would be statutorily proper. In reply, the rejection of USC 101 has set forth clearly as to why the word "adapted for" such as recited does not contribute in establishing specific functionality being performed or carried out via concrete actions so to reasonably convey that some tangible real world entities would have resulted therefrom. The recitation of 'adapted for 'controlling' does not particularly shed specifics to how this 'controlling' amounts to in order to inform one skill in the art to be learned on any form of step action or transformation so to yield a tangible result; and as set forth above, such amendment does remedy a non-statutory type of deficiency; i.e. there is lack of actual and concrete step actions (or reasonable specific teaching regarding thereto) using what appear to be the functionality of 'controlling', and this does not teach that at the end of such steps some object (in the domain of the application) being controlled reaches a concrete and useful state relative to a previous state existing prior to such controlling step is taken; such object state being deemed tangible and useful in the field of application as intended, as required per the Practical Application Test.*

This statement references Page 3 of the present Office Action, which asserts:

*[e]ven though the above claimed program code is recited as being adapted for control some controller, the fact that it is only adapted for such control cannot translate into a actual action (or execution via an engine) being taken so to yield any form of result; that is, the phrase 'adapted for' merely entails that some functionality exists but remains static without being put into use. Merely descriptive elements are statutorily non-practical per se, thus basically amounting to abstract entities. The claimed system must reasonably convey specificity about a practical application based on action interrelating the elements therein (how these elements participate via interaction to yield a real-world result) so that such specific action would reasonably lead to a useful, concrete and tangible result, and should not just be limited to listing abstract concepts purported for what appears to be but an abstract representation standing for an intended use (emphasis added on 'for controlling' as a intended use). As recited, the claim also falls into what appears to be a generalization of teaching, bordering what is statutorily referred to as an omnibus limitation, namely the reciting of 'adapted for controlling a ... controller', semantically preempting thereby many industry-related methodologies. The basic requirement for a USC 101 statutory invention requires that it show a substantial, specific and credible disclosure; none of which is perceived from the above 'adapted for' limitation. Hence, the claim only amounts to an abstract, non-practical idea for failing the requirement of the Practical Application test, hence is rejected for leading to a non-statutory subject matter.*

#### **A. Interpreting “adapted”**

Applicant respectfully traverses the assertion of the present Office Action regarding the phrase “adapted”.

The Federal Circuit has interpreted the word “adapted” as preceding “functional language [that] limits the scope of these claims to devices that have the capability of” performing the stated function. *See, R.A.C.C. Indus., Inc. v. Stun-Tech, Inc.*, 178 F.3d 1309, 49 USPQ2d 1793

(Fed. Cir. 1998) (*cert. denied*, 526 U.S. 1098 (1999)). Because such functional language serves as a claim limitation, a reference cited to support a rejection of a claim must describe a structure(s) capable of performing each claimed function preceded by the term “adapted.”

Further, in the case of *In re Land*, the CCPA ruled on a relevant claim that stated “said color-providing substances associated with at least the inner photosensitive emulsion layers are *adapted to be rendered diffusible* in said liquid composition *only after at least substantial development* of the next outermost photosensitive ... layer has occurred.” *See, In re Land*, 368 F.2d 866, 151 USPQ 621, 635 (CCPA 1966). The CCPA noted that the italicized portions of the claim were functional but held the claim patentable in view of the **functional limitations**.

In yet another case, the Federal Circuit reversed an Examiner’s rejection of a patent claim due to the Examiner’s failure to provide patentable weight to **functional limitations**. *See, In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Applicant respectfully submits that the assertion of the present Office Action that the claimed subject matter of “the industrial automation computer program adapted for controlling a programmable logic controller” are “descriptive elements [that] are statutorily non-practical per se” is legally erroneous.

## **B. Conclusion**

Applicant respectfully submits that each of claims 36-38 complies with the standards of MPEP § 2106 and, thus, comprises statutory subject matter. Accordingly, reconsideration and withdrawal of these rejections is respectfully requested.

## **III. The Obviousness Rejections**

Each of claims 1-52 was rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,634,008 (“Dole”) in view of U.S. Patent No. 6,167,406 (“Hoskins”). These rejections are respectfully traversed.

**A. Legal Standards**

**1. *Prima facie* Obviousness Criteria**

Over 50 years ago, in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), the Supreme Court established factors regarding the factual inquiry required to establish obviousness. The factors include:

1. determining the scope and contents of the prior art;
2. ascertaining differences between the prior art and the claims at issue;
3. resolving the level of ordinary skill in the pertinent art; and
4. considering objective evidence indicating obviousness or nonobviousness.

The Federal Circuit has applied *Graham*'s required factual inquiry in numerous legal precedents that are binding on the USPTO.

It is recognized that most patentable inventions arise from a combination of old elements and often, each element is found in the prior art. *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998). However, mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole. *Id.* at 1355, 1357.

Instead, "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach... all the claim limitations." *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143.

Moreover, the "Patent Office has the initial duty of supplying the factual basis for its rejection." *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057, *reh'g denied*, 390 U.S. 1000 (1968). "It may not... resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis". *Id.*

It is legal error to "substitute[] supposed *per se* rules for the particularized inquiry required by section 103. It necessarily produces erroneous results." *See, In re Ochiai*, 71 F.3d

1565, 1571, 37 USPQ2d 1127, 1132-33 (Fed. Cir. 1998); *In re Wright*, 343 F.2d 761, 769-770, 145 USPQ 182, 190 (CCPA 1965).

“Once the examiner... carries the burden of making out a *prima facie* case of unpatentability, ‘the burden of coming forward with evidence or argument shifts to the applicant.’” *In re Alton*, 76 F.3d 1168, 37 USPQ2d 1578 (Fed. Cir. 1996) (quoting *In re Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444).

## 2. Motivation or Suggestion to Combine the Applied References

Under the *Graham* analysis, the “examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” *See*, MPEP 2142. The requirements for meeting this burden are clear.

To factually support a *prima facie* conclusion of obviousness, an Office Action must clearly and objectively prove “the reasons one of ordinary skill in the art would have been motivated to select the references”. *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998); *In re Johnston*, 435 F.3d 1381 (Fed. Cir. 2006).

Further, “the examiner **must show reasons** that the skilled artisan, **confronted with the same problems** as the inventor and with no knowledge of the claimed invention, **would select the elements** from the cited prior art references for combination **in the manner claimed**” (emphasis added). *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998); *In re Sang-Su Lee*, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

To show these reasons, “[p]articular findings must be made”. *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). Such factual findings must be supported by “concrete evidence in the record”. *In re Zurko*, 258 F.3d 1379, 1385-86, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

Moreover, a showing of combinability must be “clear and particular”. *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 161(Fed. Cir. 1999). That strong showing is needed because, “**obviousness requires proof** ‘that the skilled artisan . . . would select the elements from the cited prior art references for combination in the manner claimed’”. *In re Johnston*, 435



F.3d 1381 (Fed. Cir. 2006) (quotation omitted) (emphasis added).

Thus, the Office Action must clearly, particularly, and objectively prove some “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

“select the references”;

“select the teachings of [the] separate references”; and

“combine [those teachings] in the way that would produce the claimed” subject matter.

*In re Johnston*, 435 F.3d 1381 (Fed. Cir. 2006) (internal citations omitted). *See also, In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998) (discussing “the test of whether it would have been obvious to select **specific** teachings and combine them as did the applicant”) (emphasis added); and *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985) (“When prior art references require selective combination... to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself.”). “The absence of . . . a suggestion to combine is dispositive in an obviousness determination.” *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579, 42 USPQ2d 1378, 1383 (Fed. Cir. 1997).

Further, these requirements apply regardless of whether the Office Action relies upon modifying or combining purported teachings.

*Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious modification of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the **desirability** of the modification.... It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that one cannot use hindsight*

*reconstruction to pick and choose among isolated disclosures in the prior art to deprecated the claimed invention.*

*In re Fritch*, 972 F.2d 1260, 23 USPQ 2d 1780, 1783-1784 (Fed. Cir. 1992) (citing *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991); *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985); and *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) (internal quotations omitted) (emphasis added)).

### 3. Inoperative Combinations

It is inappropriate to combine references when the combination “would produce a seemingly inoperative device.” *See, Nat’s Steel Car, Ltd. v. Canadian Pac. Ry., Ltd.*, 357 F.3d 1319, 1339 (Fed. Cir. 2004); *Tec Air Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1360 (Fed. Cir. 1999) (quoting *In re Sponnoble*, 405 F.2d 578, 587 (CCPA 1969).

### 4. References That Teach Away

Federal Circuit law indicates that references “that teach away cannot serve to create a *prima facie* case of obviousness.” *See, In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994). If a proposed combination would render a reference inoperable for its intended purpose, the reference teaches away from the proposed combination. *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 52 USPQ2d 1294 (Fed. Cir. 1994). “If references taken in combination would produce a ‘seemingly inoperative device,’... such references teach away from the combination and thus cannot serve as predicates for a *prima facie* case of obviousness”. *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 60 USPQ2d 1001, 1010 (Fed. Cir. 2001).

### 5. Pertinent Prior Art References

The *Graham* analysis requires that, to rely on a prior art reference as a basis for a rejection, the USPTO must show that the reference is “reasonably pertinent to the particular problem with which the invention was involved.” *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 664,



57 USPQ2d 1161, 1166 (Fed. Cir. 2000); *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1535, 218 USPQ 871, 876 (Fed. Cir. 1983); *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992); *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006).

“References are selected as being reasonably pertinent to the problem based on the judgment of a person having ordinary skill in the art.” *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006) (“[I]t is necessary to consider ‘the reality of the circumstances,’—in other words, common sense—in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor” (quoting *In re Wood*, 599 F.2d 1032, 1036 (C.C.P.A. 1979))).

“If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem, and that fact supports use of that reference in an obviousness rejection. An inventor may well have been motivated to consider the reference when making his invention. If it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.” *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006) (citing *In re Clay*, 966 F.2d 656, 659-60 (Fed. Cir. 1992)).

Yet “[d]efining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.” *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006) (quoting *Ecolochem, Inc. v. S. Cal. Edison Co.*, 227 F.3d 1361, 1372 (Fed. Cir. 2000)).

## B. Analysis

### 1. Hoskins Teaches Away from the Asserted Combination

Each of independent claims 1, 19, 36, 39, 41, 44, and 51 recite a “markup language” version of an “industrial automation computer program”.

Hoskins allegedly recites that “HyperText Markup Language (HTML)” (see col. 11, lines 53-54) “**has proven to be inadequate** in the following areas:

- Poor performance;
- Restricted user interface capabilities;

- Can only produce static Web pages;
- Lack of interoperability with existing applications and data; and
- Inability to scale”

(see col. 12, lines 4-12).

Instead of HTML, **Hoskins praises non-mark-up languages** such as Java and Active X for “**Web applications**”. See col. 11, line 65 – col. 12, line 2; col. 12, lines 20-65.

U.S. Patent Number 6,463,578 (Johnson) has been cited as prior art to the present Application in an Information Disclosure Statement filed 24 August 2005. Johnson provides context for determining a proper meaning for the phrase “Java” by stating that:

*Java is an object-oriented programming language developed by Sun Microsystems, Mountain View, California. Java is a portable and architecturally neutral language. Java source code is compiled into a machine-independent format that can be run on any machine with a Java runtime system known as the Java Virtual Machine (JVM). The JVM is defined as an imaginary machine that is implemented by emulating a processor through the use of software on a real machine. Accordingly machines running under diverse operating systems, including UNIX, Windows 95, Windows NT, and Macintosh having a JVM can execute the same Java program. Java Server Page (JSP) technology is a scripting language technology for controlling the content or appearance of Web pages through the use of server-side applications, known as “servlets.” **Servlets are Java applications** that run on a Web server to modify Web pages before they are sent to requesting clients. Servlets may be referred to as server-side applets or applications. Similar to the way applets run on a browser and extend a browser’s capabilities, servlets run on a Java-enabled Web server and extend the Web server’s capabilities. Servlets use classes and methods in the JavaSoft Java Servlet Application Programming Interface (API). The JavaSoft Java Servlet Application Programming Interface (API) is described at <http://www.ibm.com/java/servexp/sedocd.html>, which is incorporated herein by reference in its entirety. As is known to those skilled in this art, servlets may be local*

*or remote. That is, servlets may reside on a Web server receiving a request from a Web client or may be located on a server remotely located from the Web server receiving a Web client request.*

*In response to a client request for a Web page, a JSP file referred to in the requested Web page typically is transformed into (or may call) one or more servlets that execute. A JSP file typically contains source code in a markup language, such as HyperText Markup Language (HTML) and Extensible Markup Language (XML). This source code typically includes all the information needed to call one or more servlets. A servlet typically generates an HTML response to a requesting client.*

See col. 1, lines 14-50.

Thus, Johnson distinguishes Java from markup languages. Java is an “object-oriented” language. Johnson indicates that “source code in a markup language” includes information needed to call “servlets” written as “Java applications”. Thus, Johnson indicates that Java is not a markup language.

U.S. Patent Number 5,842,020 (Faustini) is cited as prior art to the present Application in an Information Disclosure Statement filed herewith. Faustini provides context for determining a proper meaning for the phrase “Java” by stating, at col. 8, lines 40-53, that:

*[a]nother technology that has function and capability similar to JAVA is provided by Microsoft and its ActiveX technology, to give developers and Web designers the wherewithal to build dynamic content for the Internet and personal computers. ActiveX runs only the so-called Wintel platform (a combination of a version of Windows and an Intel microprocessor), as contrasted with Java which is a compile once, run anywhere language.*

*ActiveX includes tools for developing animation, 3-D virtual reality, video and other multimedia content. The tools use Internet standards, work on multiple platforms, and are being supported by over one hundred companies. The group's building blocks are called ActiveX Controls, small, fast components that enable developers to embed parts of software in hypertext markup language (HTML) pages. ActiveX*

**AMENDMENT UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 2193  
PATENT**

**Application # 09/822,300**

**Attorney Docket # 2000P07515US01 (1009-087)**

*Controls work with a variety of programming languages including Microsoft's Visual C++, Borland's Delphi, Microsoft's Visual Basic programming system and, in the future, Microsoft's development tool for Java, code named "Jakarta." ActiveX Technologies also includes ActiveX Server Framework, allowing developers to create server applications.*

Thus, Faustini distinguishes ActiveX from markup languages. Faustini explains that ActiveX has a function and capability similar to Java, an "object-oriented" language. Faustini indicates that, as with Java servlets, ActiveX controls are called by code written in a "markup language". Thus, Faustini indicates that ActiveX is not a markup language.

Thus, by denigrating markup languages, Hoskins teaches away from using "a markup language" version of "industrial automation" code. As a result, one of ordinary skill in the art would have no motivation to consider Hoskins for combination with Dole to arrive at the claimed subject matter due to the inadequacies of HTML listed by Hoskins.

Regarding this argument, which was previously presented in a proper Office Action Reply filed 24 July 2006, the present Office Action asserts, at Page 14:

*Applicant has submitted that Hoskins discrediting of the markup language and praise non-markup language ( Appl. Rmrks, pg. 16, bottom); and in return, it is noted that there is no direct referral to any part of the Office Action being put under scrutiny in order for a proper rebut be put into effect; and this remark appears to be not commensurate with the specifics of the rejection; and thus will not be given weight for it does not establish content pertinent to what is deemed a proper prima facie response in regard to the state of the Office Action. Applicant contends with asking where are the teachings to would require to meet the rationale of rejection when it is laid out in black & white in the rejection which limitation has been met and which would be rendered obvious.*

Applicant respectfully submits that these two sentences are largely unintelligible and requests clarification regarding the meaning of the following clauses:

**AMENDMENT UNDER 37 C.F.R. 1.116**  
**EXPEDITED PROCEDURE**  
**EXAMINING GROUP 2193**  
**PATENT**  
**Application # 09/822,300**  
**Attorney Docket # 2000P07515US01 (1009-087)**

- i) “it is noted that there is no direct referral to any part of the Office Action being put under scrutiny in order for a proper rebut be put into effect”;
- ii) “this remark appears to be not commensurate with the specifics of the rejection”;
- iii) “and thus will not be given weight for it does not establish content pertinent to what is deemed a proper *prima facie* response in regard to the state of the Office Action”; and
- iv) “Applicant contends with asking where are the teachings to would require to meet the rationale of rejection when it is laid out in black & white in the rejection which limitation has been met and which would be rendered obvious”.

As Applicant understands these assertions, Applicant respectfully submits that the assertions are factually and legally erroneous. As stated, *supra*, a *prima facie* case of obviousness cannot be established by references that teach away from a proposed combination. Applicant respectfully submits that the Office Action Reply dated 24 July 2006, to which this assertion refers, properly stated that no *prima facie* case of obviousness was established for any claim rejection using Hoskins as a reference since Hoskins teaches away from the proposed combination.

Applicant respectfully submits that the assertion of the present Office Action that “there is no direct referral to any part of the Office Action being put under scrutiny” is factually erroneous. The traversal of Hoskins as a reference requested a withdrawal of each rejection of claims 1-52, each of which was rejected based upon applied portions of Hoskins. Applicant further submits that the traversal of the use of Hoskins as an available reference is “commensurate with the specifics of the rejection”, since applied portions of Hoskins were and are used in rejecting each of claims 1-52, contrary to the erroneous assertion of the present Office Action.

Regarding the argument that Hoskins teaches away from the proposed combination, the present Office Action argues, *inter alia*, at Page 17, that the:

*rejection has been construed in accordance with the teachings by Hoskins in the context that Markup language is still the main language to transport other code applications or executable like Java or ActiveX ... For one skill [sic] in the art, it would be incorrect to perceive that Hoskins for taking advantage of additional embedded ActiveX objects (written in a non-Markup language) to enhance the incorporating of needed data within browser pages for a specific purpose would teach away from the use of markup language ...*

Applicant respectfully submits that this argument of the present Office Action is utterly devoid of evidence beyond apparent Official Notice regarding unsupported characterizations of Hoskins and alleged knowledge possessed by one skilled in the art. Accordingly, Applicant respectfully requests provision of references supporting each and every evidentiary allegation of the present Office Action presented in support of an apparent bald assertion that “For one skill [sic] in the art, it would be incorrect to perceive that Hoskins for taking advantage of additional embedded ActiveX objects (written in a non-Markup language) to enhance the incorporating of needed data within browser pages for a specific purpose would teach away from the use of markup language”.

Applicant respectfully submits that, in light of evidence presented, Hoskins may not be properly combined with Dole. Applicant further submits that, at least as a result of Hoskins teaching away from the proffered combination, that the cited references fail to establish a *prima facie* case of obviousness. Because no *prima facie* rejection of any independent claim has been presented, no *prima facie* rejection of any dependent claim can be properly asserted.

Consequently, reconsideration and withdrawal of each rejection of claims 1-52 is respectfully requested.

## **2. Dole is Not Pertinent Art to Claimed Subject Matter**

Dole allegedly recites, at the Abstract:

*[a]n environment for designing integrated circuits. Computers include browsers for displaying pages of forms, with the computers in communication with a*



*methodology server and a compute server. The methodology server contains design methodologies accessed by the computers, with the design methodologies defining steps of **designing and testing of integrated circuits**. The computers or methodology server are also in communication with a compute server. The compute server executes electronic design automation tools as requested.*

Thus, Dole relates to designing and testing “integrated circuits”.

By contrast, the present Application states that the field of the invention is “graphical programming languages for programmable logic controllers. In particular, the invention concerns a method and system for standardized storage of graphical programming languages. See Page 1.

One skilled in the art at the time of the invention would not have found that “designing and testing of integrated circuits” to be in the same field of endeavor as “graphical programming languages for programmable logic controllers”.

Likewise, one skilled would not find “designing and testing of integrated circuits” to be “reasonably pertinent to the particular problem with which the inventor was involved” in “standardized storage of graphical programming languages”.

Further, because they are directed at vastly different problems, one of skill in the art would consider Dole to be non-analogous art to that of Hoskins.

Thus, Dole is not pertinent art to the present Application and is not available as a reference for combination with Hoskins.

The present Office Action responds to this argument by asserting, at Page 14:

*[t]his global remark without reference to absolutely no claim does not clearly point out specifics in the Office Action with respect to specific claim(s); hence cannot be addressed for it only bears a remark of general nature not traversing the very grounds of rejection in the Office Action which are deemed specific, detailed and intended for each and all of the corresponding claims. Applicant's arguments fail to comply with 37 CFR 1.111 (b) because they amount to a general allegation that the claims define a patentable invention without specifically*

*pointing out how the language of the claims (e.g. which limitation, in which claim) patentably distinguishes them from the references.*

As an initial matter, Applicant noted in the Office Action Reply dated 24 July 2006 that Dole was used as a basis for rejecting each of claims 1-52. Applicant, in traversing the continued use of Dole as a reference, properly requested a withdrawal of each rejection of each of claims 1-52 (see pages 20-21 of that Office Action Reply). As a result, the assertion that “[t]his global remark” was “without reference to absolutely no claim” is factually erroneous and utterly devoid of substantive merit.

Moreover, Applicant respectfully submits that the Office Action Reply dated 24 July 2006 complied fully with 37 CFR 1.111(b). Specifically, Applicant provided persuasive arguments, at pages 16-21 of that Office Action Reply, that the Dole and Hoskins references relied upon in making each rejection of claims 1-52 were not, as a matter of law, available for use in those rejections, thus demonstrating that no *prima facie* rejection had been made regarding any claim of the present application. Applicant further provided a detailed analysis was presented, at least at pages 21-71 of that Office Action Reply, “pointing out how the language of the claims (e.g. which limitation, in which claim) patentably distinguishes them from the references”. Thus, the assertion of the present Office Action that Applicant’s Office Action Reply dated 24 July 2006 was not compliant with 37 CFR 1.111(b) is equally devoid of merit. Accordingly, Applicant respectfully requests a written acknowledgement indicative of the compliance Office Action Reply dated 24 July 2006 with 37 CFR 1.111(b).

Applicant respectfully reiterates that one skilled in the art at the time of the invention would not have found that “designing and testing of integrated circuits” to be in the same field of endeavor as “graphical programming languages for programmable logic controllers”.

For at least these reasons, Applicant respectfully requests withdrawal of Dole as a reference and a withdrawal of each rejection of each of claims 1-52 based thereon.

### 3. Claim 1

Claim 1 recites, *inter alia*, “**identifying an internal representation of an industrial**

automation computer program, the **industrial automation computer program adapted for controlling a programmable logic controller**, the internal representation stored in a computer memory, the internal representation created via a graphical programming language; and **converting the internal representation to a markup language version of the industrial automation computer program**". The applied portions of the relied upon references do not teach a "identifying an internal representation of an industrial automation computer program, the **industrial automation computer program adapted for controlling a programmable logic controller**, the internal representation stored in a computer memory, the internal representation created via a graphical programming language; and **converting the internal representation to a markup language version of the industrial automation computer program**".

The present Office Action alleges, at Page 4, that "all files generated from the EDA tool reads on internal representation of the automation program), the internal representation created via a graphical programming language". Yet Dole does not teach a "programmable logic controller". Dole further does not teach that "all files generated from the EDA tool" are "**industrial automation computer program[s] adapted for controlling a programmable logic controller**". Applicant respectfully submits that the present Office Action fails to establish a *prima facie* rejection of claim 1 for this claimed subject matter.

The present Office Action relies upon "Fig. 10; col. 16; lines 10-47; Fig. 13" of Dole as allegedly teaching "**converting the internal representation to a markup language version of the industrial automation computer program**". Yet, FIG. 10 of Dole allegedly illustrates:

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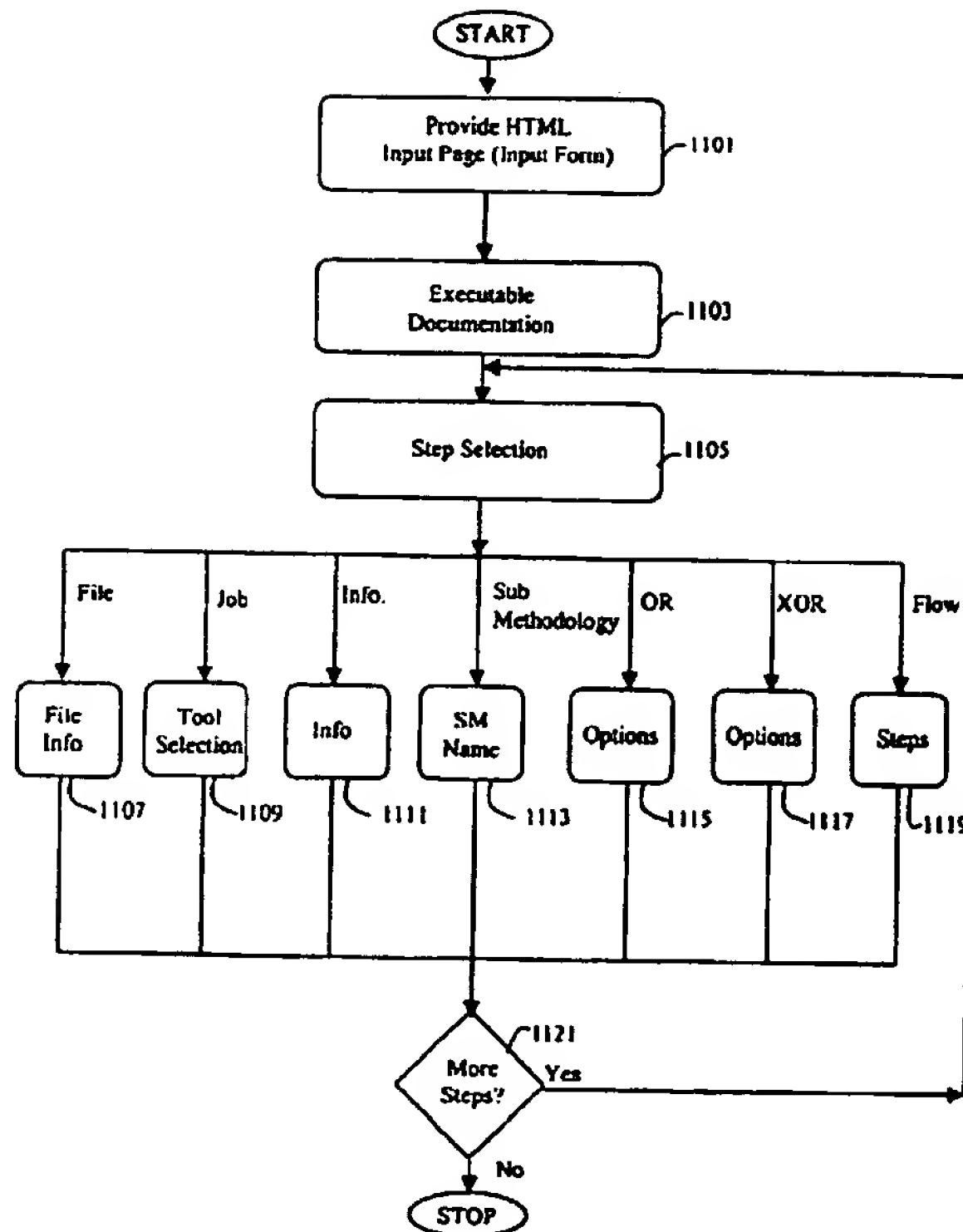


FIG. 10

Applicant respectfully asks, where does this relied upon FIG. 10 of Dole teach “**converting** the internal representation **to a markup language** version of the industrial automation computer program”? Moreover, FIG. 13 of Dole allegedly illustrates:

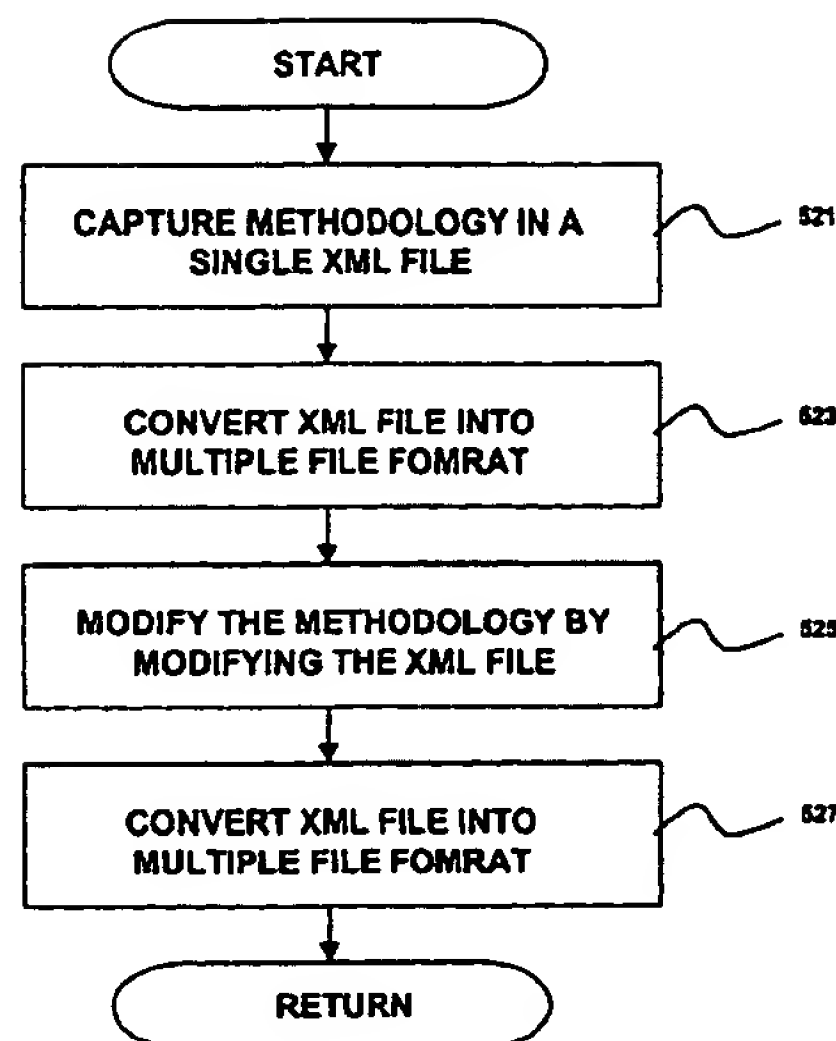


FIG. 13

Applicant respectfully asks, where does this relied upon FIG. 13 of Dole teach “**converting** the internal representation **to a markup language** version of the industrial automation computer program”? Further, col. 16, lines 10-47 of Dole allegedly recite:

*[a]lthough HTML based forms are typically used to capture design methodologies, it is often more desirable to use XML (Extensible Markup Language) script to define design methodologies because of advantages that XML has over HTML. In XML, information is divided into useful components called elements, e.g., titles, paragraphs and part numbers. The elements may be formatted, sorted, or searched in consistent fashion. The elements are typically named and defined in a computer program called a Document Type Definition (DTD)*

*Using XML, a methodologist is able to create a single file to describe each design methodology. The single file that describes the design methodology may be used to create other files needed to execute the design methodology. For example, new features can be added to XML over time since XML is an extensible language. In addition, parsers are easy to develop using XML. For example, the parsers may*

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*be partially generated automatically from the DTD. Further, XML sources may be scanned by various different programs for different purposes. For example, a source code based on XML may be scanned by a search engine.*

*Another benefit of using XML is that XML is capable of providing multiple language support. For another example, an XML file is easy to create provided that a good DTD has been created. In addition, an XML-based DTD file may be used to specify the internal nature of the XML files used to define design methodologies. Further, XML hyper-linking is more powerful than HTML hyper-linking, and XML hyper-linking may be used to refer to parts of other XML files. Widely used web browsers may not have a capability to display pages having embedded XML. Therefore, in an alternate embodiment, rather than using an input page to capture design methodology, a methodologist creates an XML script defining a design methodology in a single file. In this embodiment, the XML files are used by Common Gateway Interfaces (CGI's) to drive the integrated circuit design and fabrication system rather than directly viewed using a browser.*

Applicant respectfully asks, where does this relied upon portion of Dole teach:

1. “converting” anything?
2. “converting” anything “to a markup language version”?
3. “an internal representation [of an industrial automation control program adapted for controlling a programmable logic controller]”?
4. **“converting the internal representation to a markup language version of the industrial automation computer program”?**

Applicant respectfully submits that at least this claimed subject matter is absent from the applied portions of Dole. The applied portions of Hoskins do not overcome at least these deficiencies of Dole.

Regarding these persuasive arguments, previously presented in the Office Action Reply of 24 July 2006, the present Office Action asserts at Pages 15-16:

*[t]he rejection has set forth mappings from Dole to each of the portion of the*



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*above recited subject matter; and it is deemed superfluous (emphasis added) here to again paste the entire text of rejection in terms of mapping Dole's applied parts to each of the above limitations and where Dole teachings require combination with Hoskins. The examiner has -with best effort- interpreted each of the claimed features (e.g. if there is unclear teaching from the claim, a claim indefiniteness type of rejection would be set forth) and correspondingly established parts of Dole that can reasonably be analogized to each feature (refer to rejection); and Applicant's rebut thereto is equally expected to be presented in a parallel manner. That is, for each of the Examiner's mappings (i.e. Dole's cited parts), Applicant has to pinpoint specific portions and any corresponding deficiency thereof. Until Applicant detects specific in each of the cited parts with respect to specific language used in claim 1, the above questions by Applicant can only be viewed as a attempt to discredit the rejection, but which amounts to an allegation put in form of questions that can be deemed inappropriate in terms of a prima facie rebut to the Office Action. It is observed that should there be some flaw in the Office Action such as to failing to establish the initial burden (to exhibit how each feature has been met), it also incumbent to the Applicant in return to point out such Office Action's deficiency in terms of showing very specific cited parts of Dole (that is each of them if possible) which are deemed improper; and correspondingly explain their weakness or deficiencies with regard to the corresponding claimed feature. The rebut of the Applicant amounts to: (i) repeat the claimed subject matter, (n) reciting a portion in Dole discussing on evolving of markup language and HTML with no explanation whatsoever about the construct or language of the Rejection commensurate to a clear deficiency in addressing a particular feature, then (Hi) asking where in Dole each of the parts of the claimed features are shown, The addressing of the 'converting,...logic controller1 limitation has*

*been set forth in 2 parts, the first part is the markup language part mapped with Dole, the second in the automation program in industry of PLC, fulfilled with the combination Dole/Hoskins. And to rebut this, the applicant has insufficiently attacked each such part of the rejection. For instance, until specifics on each of the Dole's cited 'parts are identified as faulty, it is deemed that a possible rebut (against Applicant's argument if any) cannot reasonably be effectuated for the lack of specific substance as observed above. For example, Applicants appears to not observe the burden of providing what is expected of a proper prima facie type of rebut against the rejection, and this includes Applicant's omission in pointing out how Hoskins' teachings as combined with Dole would render the rationale of obviousness improper. Thus, the arguments for lacking prima facie specificity are insufficient to overcome the rejection*

Applicant traverses these assertions as being legally and factually erroneous. As an initial matter, as stated *supra*, the initial burden is on the examiner to make “out a *prima facie* case of unpatentability”. *In re Alton*, 76 F.3d 1168, 37 USPQ2d 1578 (Fed. Cir. 1996). The Office Action Reply dated 24 July 2006 specifically pointed out numerous reasons why no *prima facie* rejection had been presented regarding any claim. The present Office Action fails to recognize that the burden has never shifted and fails to substantively respond to the substance of Applicant's arguments. Applicant respectfully submits that, contrary to the assertion of the present Office Action, it is not “superfluous” to comply with meeting the required burden of proof regarding presenting evidence to support each and every alleged *prima facie* rejection of the claimed subject matter.

Moreover, the assertions state that Applicant has not “pinpoint[ed] specific portions [of the applied portions of Dole] and any corresponding deficiency thereof”. Applicant respectfully submits that the assertions are factually erroneous and that both the present Office Action Reply, as well as the Office Action Reply dated 24 July 2006, “pinpoint specific portions” of Dole and identify the “corresponding deficienc[ies] thereof”.

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The present Office Action fails to answer any of the questions asked by Applicant requesting a detailed explanation regarding the specific language of the alleged teachings of the applied portions of the relied upon references purported to render the claimed subject matter obvious.

For at least these reasons, Applicant respectfully submits that the assertions of the present Office Action fail to comply with MPEP 707.07, which requires that a proper Office Action must be complete as to all matters, must provide a clear explanation of all actions taken, and must answer in detail the substance of each of the submitted arguments.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, as **attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

Further, the present Office Action fails to present legally sufficient evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Instead, regarding selected proffered combinations, the present Office Action presents a logically convoluted argument that provides only an unsupported assertion, at Pages 5-6:

*it would have been obvious for one of ordinary skill in the art at the time the invention was made to apply the circuit synthesis tool, control data communication and web markup conversion as taught by Dole so that the target*

*to be designed would be a control logic of a integrated chip having control functionality of a PLC such as taught by Hoskins. One would be motivated to do so because the internet based control applied to industrial design and control as endeavor by both Dole and Hoskins can enable simultaneous control from multiple developers as set forth above, and using this framework as by Hoskins would enable industrial logic as perceived by Dole to target for design of PLC as one of circuitries as endeavored by Dole based on the facilitated communication as set by Hoskins.*

Applicant respectfully submits that the reasoning of this argument, as well as that leading up to it, is logically convoluted and largely unparseable. For example, what relevance does the statement that “the target to be designed would be a control logic of a integrated chip having control functionality of a PLC such as taught by Hoskins” have to the claimed subject matter of “industrial automation computer program adapted for controlling a programmable logic controller”? Further, what relevance does the statement that “using this framework as by Hoskins would enable industrial logic as perceived by Dole to target for design of PLC as one of circuitries as endeavored by Dole based on the facilitated communication as set by Hoskins” have to the claimed subject matter of “industrial automation computer program adapted for controlling a programmable logic controller”? Applicant respectfully submits that the unfounded assertion of the present Office Action is logically nonsensical and fails to establish a *prima facie* case of obviousness.

Applicant respectfully asks, where does the prior art provide any “suggestion, motivation, or teaching **in the prior art** that would have led a person of ordinary skill in the art to”:

1. “select the reference[]” of Dole for combination with Hoskins;
2. “select the teachings of” Dole for combination with Hoskins; and
3. “combine [those teachings] in the way that would produce the claimed invention”?

Applicant respectfully submits that the unsupported assertion of the present Office Action fails to provide any suggestion or motivation to combine Dole with Hoskins, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by

Applicant).

For at least these reasons, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 1. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 1.

#### **4. Claim 2**

Since claim 2 is dependent upon independent claim 1, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 1, *supra*.

Claim 2 states, *inter alia*, yet the applied portions of Dole fail to teach, “causing the markup language version of the industrial automation computer program to be stored in a computer data storage device.” Since claim 2 depends from claim 1, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “causing the markup language version of the industrial automation computer program to be stored in a computer data storage device.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 2, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 2, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive

argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 2. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 2.

### **5. Claim 3**

Since claim 3 is dependent upon independent claim 1, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 1, *supra*.

Claim 3 states, *inter alia*, yet the applied portions of Dole fail to teach, “transmitting the markup language version of the industrial automation computer program over a network to a receiving computing device.” Since claim 3 depends from claim 1, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “transmitting the markup language version of the industrial automation computer program over a network to a receiving computing device.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 3, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 3, even if such a combination would produce the claimed subject matter (a premise respectfully traversed



by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 3. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 3.

#### **6. Claim 4**

Since claim 4 is dependent upon claim 2, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 2, *supra*.

Claim 4 states, *inter alia*, yet the applied portions of Dole fail to teach, “retrieving the markup language version of the industrial automation computer program from the computer data storage device and converting the markup language version of the industrial automation computer program to the internal representation in computer memory.” Since claim 4 ultimately depends from claim 1, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “retrieving the markup language version of the industrial automation computer program from the computer data storage device and converting the markup language version of the industrial automation computer program to the internal representation in computer memory.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 4, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or

3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 4, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 4. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 4.

#### 7. Claim 5

Since claim 5 is dependent upon claim 2, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 2, *supra*.

Claim 5 recites, yet the present Office Action **fails to allege** that any of the applied portions of the relied upon references teaches “representing the retrieved industrial automation computer program as a corresponding graphical programming language version on a computer display.” The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of obviousness regarding claim 5.

Claim 5 states, *inter alia*, yet the applied portions of Dole fail to teach, “retrieving the markup language version of the industrial automation computer program from the computer data storage device and representing the retrieved industrial automation computer program as a corresponding graphical programming language version on a computer display.” Since claim 5 ultimately depends from claim 1, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “retrieving the markup language version of the industrial automation computer program from the computer data storage device and representing the

retrieved industrial automation computer program as a corresponding graphical programming language version on a computer display.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 5, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 5, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 5. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 5.

## **8. Claim 6**

Since claim 6 is dependent upon claim 5, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 5, *supra*.

Claim 6 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein a display of the markup language version of the industrial automation computer program is facilitated by a browser.” Since claim 6 ultimately depends from claim 1, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is

“adapted for controlling a programmable logic controller” and thus cannot teach “wherein a display of the markup language version of the industrial automation computer program is facilitated by a browser.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 6, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 6, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 6. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 6.

## 9. Claim 7

Since claim 7 is dependent upon claim 2, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 2, *supra*.

Claim 7 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the markup language is XML.” Since claim 7 ultimately depends from claim 1, the “markup language” is stated in the context of “a markup language version of the industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The

applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the markup language is XML.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 7, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 7, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 7. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 7.

#### 10. Claim 8

Since claim 8 is dependent upon independent claim 1, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 1, *supra*.

Claim 8 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a flowchart language.” Since claim 8 depends from claim 1, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic

controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a flowchart language.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 8, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 8, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 8. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 8.

## **11. Claim 9**

Since claim 9 is dependent upon independent claim 1, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 1, *supra*.

Claim 9 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a ladder logic language.” Since claim 9 depends from claim 1, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic



controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a ladder logic language.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 9, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 9, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 9. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 9.

## **12. Claim 10**

Since claim 10 is dependent upon independent claim 1, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 1, *supra*.

Claim 10 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a function block diagram language.” Since claim 10 depends from claim 1, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a

programmable logic controller". The applied portions of Dole do not teach, "industrial automation computer program" that is "adapted for controlling a programmable logic controller" and thus cannot teach "wherein the graphical programming language comprises a function block diagram language."

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 10, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 10, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 10. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 10.

### **13. Claim 11**

Since claim 11 is dependent upon independent claim 1, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 1, *supra*.

Claim 11 states, *inter alia*, yet the applied portions of Dole fail to teach, "wherein the graphical programming language comprises a sequential function chart." Since claim 11 depends from claim 1, the "graphical programming language" creates an "internal

representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a sequential function chart.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 11, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 11, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 11. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 11.

#### **14. Claim 12**

Since claim 12 is dependent upon claim 7, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 7, *supra*.

Claim 12 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a flowchart language.” Since claim 12 ultimately

depends from claim 1, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a flowchart language.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 12, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 12, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 12. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 12.

### **15. Claim 13**

Since claim 13 is dependent upon claim 7, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 7, *supra*.

Claim 13 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the

graphical programming language comprises a ladder logic language.” Since claim 13 ultimately depends from claim 1, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a ladder logic language.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 13, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 13, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 13. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 13.

#### **16. Claim 14**

Since claim 14 is dependent upon claim 7, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 7, *supra*.

Claim 14 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a sequential function chart.” Since claim 14 ultimately depends from claim 1, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a sequential function chart.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 14, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 14, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 14. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 14.

## 17. Claim 15

Since claim 15 is dependent upon claim 7, Applicant respectfully incorporates by

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WYATT, TAYLOR & POND



reference each traversal of the present Office Action regarding claim 7, *supra*.

Claim 15 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a function block diagram language.” Since claim 15 ultimately depends from claim 1, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a function block diagram language.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 15, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 15, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 15. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 15.

\_\_\_\_\_  
[Signature] the art to

**18. Claim 16**

Since claim 16 is dependent upon independent claim 1, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 1, *supra*.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 16, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 16, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 16. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 16.

**19. Claim 17**

Since claim 17 is dependent upon claim 7, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 7, *supra*.

Claim 17 states, *inter alia*, yet the applied portions of Dole fail to teach, “retrieving the markup language version of the industrial automation computer program from the computer data storage device and representing the retrieved industrial automation computer program as a corresponding graphical programming language version on a computer display.” Since claim 17 ultimately depends from claim 1, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach,

“industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “retrieving the markup language version of the industrial automation computer program from the computer data storage device and representing the retrieved industrial automation computer program as a corresponding graphical programming language version on a computer display.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 17, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 17, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 17. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 17.

## 20. Claim 18

Since claim 18 is dependent upon claim 17, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 17, *supra*.

Claim 18 states, *inter alia*, yet the applied portions of Dole fail to teach, “displaying the industrial automation computer program via a browser.” Since claim 18 ultimately depends from

claim 1, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “displaying the industrial automation computer program via a browser.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 18, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 18, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 18. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 18.

## 21. Claim 19

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. *See* MPEP 707.07(d).

Claim 19 recites, *inter alia*, yet the present Office Action fails to allege that any applied portion of any relied upon reference teaches “**computer readable program** code adapted for

identifying an industrial automation computer program adapted for controlling a programmable logic controller, the industrial automation computer program created via a tool and stored in computer memory in an internal representation, the industrial automation computer program created using a graphical programming language”.

Claim 19 recites, *inter alia*, yet the present Office Action fails to allege that any applied portion of any relied upon reference teaches “**computer readable program code** adapted for converting the identified industrial automation computer program from the internal representation to a markup language version of the industrial automation computer program”.

Claim 19 recites, *inter alia*, “**identifying an internal representation of an industrial automation computer program, the industrial automation computer program adapted for controlling a programmable logic controller, the internal representation stored in a computer memory, the internal representation created via a graphical programming language; and converting the internal representation to a markup language version of the industrial automation computer program**”. The applied portions of the relied upon references do not teach a “identifying an internal representation of an industrial automation computer program, the **industrial automation computer program adapted for controlling a programmable logic controller**, the internal representation stored in a computer memory, the internal representation created via a graphical programming language; and **converting the internal representation to a markup language version of the industrial automation computer program**”.

The present Office Action alleges, at Page 4, that “all files generated from the EDA tool reads on internal representation of the automation program), the internal representation created via a graphical programming language”. Yet Dole does not teach a “programmable logic controller”. Dole further does not teach that “all files generated from the EDA tool” are “**industrial automation computer program[s] adapted for controlling a programmable logic controller**”. Applicant respectfully submits that the present Office Action fails to establish a *prima facie* rejection of claim 19 for this claimed subject matter.

The present Office Action relies upon “Fig. 10; col. 16, lines 10-47; Fig. 13” of Dole as allegedly teaching “**converting the internal representation to a markup language version of the**

industrial automation computer program”. Yet, FIG. 10 of Dole allegedly illustrates:

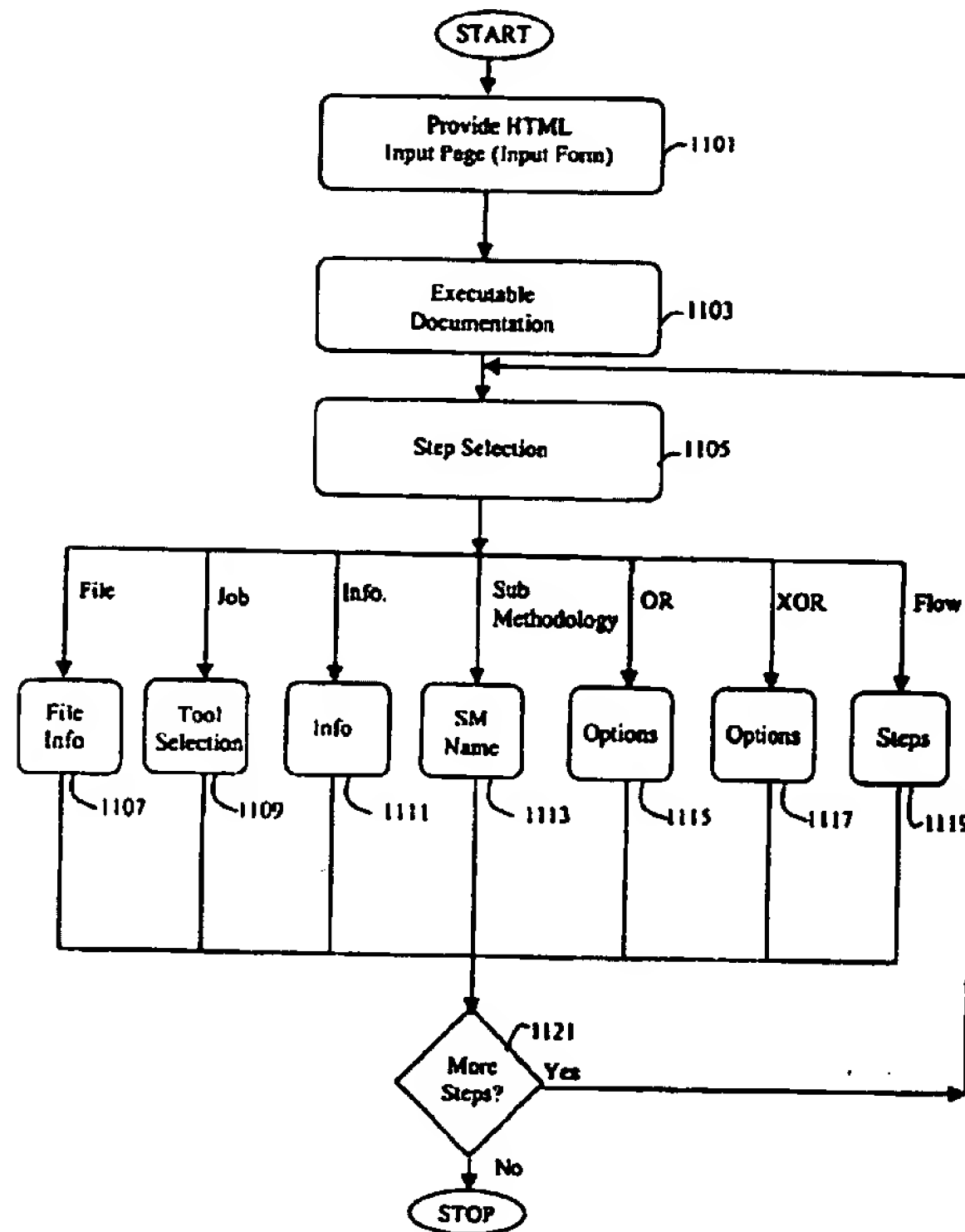


FIG. 10

Applicant respectfully asks, where does this relied upon FIG. 10 of Dole teach “**converting** the internal representation **to a markup language** version of the industrial automation computer program”? Moreover, FIG. 13 of Dole allegedly illustrates:



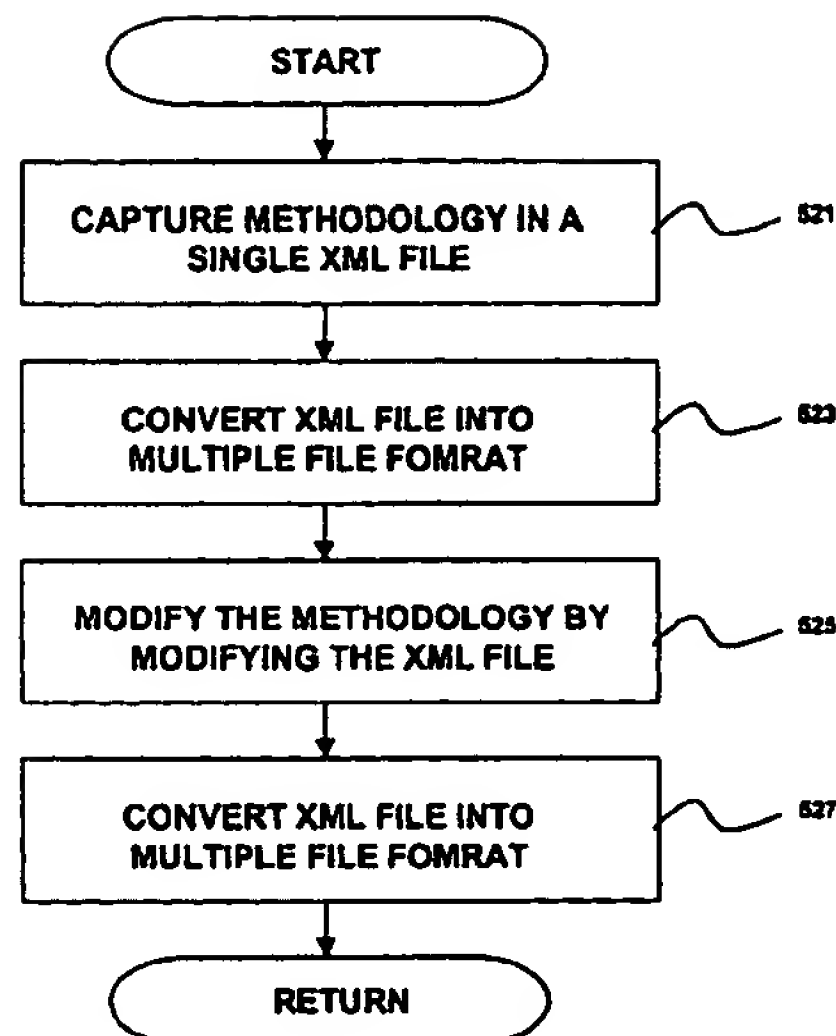


FIG. 13

Applicant respectfully asks, where does this relied upon FIG. 13 of Dole teach “**converting** the internal representation **to a markup language** version of the industrial automation computer program”? Further, col. 16, lines 10-47 of Dole allegedly recite:

*[a]lthough HTML based forms are typically used to capture design methodologies, it is often more desirable to use XML (Extensible Markup Language) script to define design methodologies because of advantages that XML has over HTML. In XML, information is divided into useful components called elements, e.g., titles, paragraphs and part numbers. The elements may be formatted, sorted, or searched in consistent fashion. The elements are typically named and defined in a computer program called a Document Type Definition (DTD)*

*Using XML, a methodologist is able to create a single file to describe each design methodology. The single file that describes the design methodology may be used to create other files needed to execute the design methodology. For example, new features can be added to XML over time since XML is an extensible language. In addition, parsers are easy to develop using XML. For example, the parsers may*

*be partially generated automatically from the DTD. Further, XML sources may be scanned by various different programs for different purposes. For example, a source code based on XML may be scanned by a search engine.*

*Another benefit of using XML is that XML is capable of providing multiple language support. For another example, an XML file is easy to create provided that a good DTD has been created. In addition, an XML-based DTD file may be used to specify the internal nature of the XML files used to define design methodologies. Further, XML hyper-linking is more powerful than HTML hyper-linking, and XML hyper-linking may be used to refer to parts of other XML files. Widely used web browsers may not have a capability to display pages having embedded XML. Therefore, in an alternate embodiment, rather than using an input page to capture design methodology, a methodologist creates an XML script defining a design methodology in a single file. In this embodiment, the XML files are used by Common Gateway Interfaces (CGI's) to drive the integrated circuit design and fabrication system rather than directly viewed using a browser.*

Applicant respectfully asks, where does this relied upon portion of Dole teach:

1. “converting” anything?
2. “converting” anything to “a markup language version”?
3. “an internal representation [of an industrial automation control program adapted for controlling a programmable logic controller]”?
4. **“converting the internal representation to a markup language version of the industrial automation computer program”?**

Applicant respectfully submits that at least this claimed subject matter is absent from the applied portions of Dole. The applied portions of Hoskins do not overcome at least these deficiencies of Dole.

The present Office Action fails to answer any of the questions asked by Applicant requesting a detailed explanation regarding the specific language of the alleged teachings of the applied portions of the relied upon references purported to render the claimed subject matter

obvious.

For at least these reasons, Applicant respectfully submits that the assertions of the present Office Action fail to comply with MPEP 707.07, which requires that a proper Office Action must be complete as to all matters, must provide a clear explanation of all actions taken, and must answer in detail the substance of each of the submitted arguments.

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, as **attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

Further, the present Office Action fails to present legally sufficient evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Instead, regarding selected proffered combinations, the present Office Action presents a logically convoluted argument that provides only an unsupported assertion, at Pages 5-6:

*it would have been obvious for one of ordinary skill in the art at the time the invention was made to apply the circuit synthesis tool, control data communication and web markup conversion as taught by Dole so that the target to be designed would be a control logic of a integrated chip having control functionality of a PLC such as taught by Hoskins. One would be motivated to do so because the internet based control applied to industrial design and control as*

*endeavor by both Dole and Hoskins can enable simultaneous control from multiple developers as set forth above, and using this framework as by Hoskins would enable industrial logic as perceived by Dole to target for design of PLC as one of circuitries as endeavored by Dole based on the facilitated communication as set by Hoskins.*

Applicant respectfully submits that the reasoning of this argument, as well as that leading up to it, is logically convoluted and largely unparseable. For example, what relevance does the statement that “the target to be designed would be a control logic of a integrated chip having control functionality of a PLC such as taught by Hoskins” have to the claimed subject matter of “industrial automation computer program adapted for controlling a programmable logic controller”? Further, what relevance does the statement that “using this framework as by Hoskins would enable industrial logic as perceived by Dole to target for design of PLC as one of circuitries as endeavored by Dole based on the facilitated communication as set by Hoskins” have to the claimed subject matter of “industrial automation computer program adapted for controlling a programmable logic controller”? Applicant respectfully submits that the unfounded assertion of the present Office Action is logically nonsensical and fails to establish a *prima facie* case of obviousness.

Applicant respectfully asks, where does the prior art provide any “suggestion, motivation, or teaching **in the prior art** that would have led a person of ordinary skill in the art to”:

1. “select the reference[]” of Dole for combination with Hoskins;
2. “select the teachings of” Dole for combination with Hoskins; and
3. “combine [those teachings] in the way that would produce the claimed invention”?

Applicant respectfully submits that the unsupported assertion of the present Office Action fails to provide any suggestion or motivation to combine Dole with Hoskins, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

For at least these reasons, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 19. For at least these reasons, Applicant respectfully requests a

withdrawal of the rejection of claim 19.

## **22. Claim 20**

Since claim 20 is dependent upon independent claim 19, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 19, *supra*.

Claim 20 states, *inter alia*, yet the applied portions of Dole fail to teach, “causing the converted, markup language version of the industrial automation computer program to be stored in a computer data storage device.” Since claim 20 depends from claim 19, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “causing the converted, markup language version of the industrial automation computer program to be stored in a computer data storage device.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 20, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 20, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 20. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 20.

### **23. Claim 21**

Since claim 21 is dependent upon claim 20, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 20, *supra*.

Claim 21 states, *inter alia*, yet the applied portions of Dole fail to teach, “causing retrieval of the markup language version of the industrial automation computer program from the computer data storage device and converting the markup language version of the industrial automation computer program to the internal representation in computer memory.” Since claim 21 ultimately depends from claim 19, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “causing retrieval of the markup language version of the industrial automation computer program from the computer data storage device and converting the markup language version of the industrial automation computer program to the internal representation in computer memory.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 21, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 21, even if



such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 21. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 21.

#### **24. Claim 22**

Since claim 22 is dependent upon independent claim 19, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 19, *supra*.

Claim 22 states, *inter alia*, yet the applied portions of Dole fail to teach, “causing a transmission of markup language version of the industrial automation computer program over a network to a receiving computing device.” Since claim 22 depends from claim 19, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “causing a transmission of markup language version of the industrial automation computer program over a network to a receiving computing device.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 22, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented

regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 22, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 22. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 22.

#### 25. Claim 23

Since claim 23 is dependent upon claim 20, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 20, *supra*.

Claim 23 recites, yet the present Office Action **fails to allege** that any of the applied portions of the relied upon references teaches “representing the retrieved industrial automation computer program as a corresponding graphical programming language version on a computer display.”

Claim 23 states, *inter alia*, yet the applied portions of Dole fail to teach, “retrieving the markup language version of the industrial automation computer program from the computer data storage device and representing the retrieved industrial automation computer program as a corresponding graphical programming language version on a computer display.” Since claim 23 ultimately depends from claim 19, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “retrieving the markup language version of the industrial automation computer program from the computer data storage device and representing the retrieved industrial automation computer program as a corresponding graphical programming language version on a computer display.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied

portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 23, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 23, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 23. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 23.

## **26. Claim 24**

Since claim 24 is dependent upon independent claim 23, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 23, *supra*.

Claim 24 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein a display of the markup language version of the industrial automation computer program is facilitated by a browser.” Since claim 24 ultimately depends from claim 19, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein a display of the markup language version of the industrial automation computer program is facilitated by a browser.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 24, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 24, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 24. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 24.

## **27. Claim 25**

Since claim 25 is dependent upon independent claim 19, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 19, *supra*.

Claim 25 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the markup language is XML.” Since claim 25 depends from claim 19, the “markup language” is stated in the context of “a markup language version of the industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach, “wherein the markup language is XML.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied

portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 25, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 25, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 25. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 25.

## **28. Claim 26**

Since claim 26 is dependent upon independent claim 19, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 19, *supra*.

Claim 26 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a flowchart language.” Since claim 26 depends from claim 19, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a flowchart language.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied

portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 26, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 26, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 26. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 26.

## 29. Claim 27

Since claim 27 is dependent upon independent claim 19, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 19, *supra*.

Claim 27 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises ladder logic.” Since claim 27 depends from claim 19, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises ladder logic.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied



portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 27, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 27, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 27. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 27.

### **30. Claim 28**

Since claim 28 is dependent upon independent claim 19, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 19, *supra*.

Claim 28 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises function block diagrams.” Since claim 28 depends from claim 19, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises function block diagrams.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied

portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 28, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 28, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 28. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 28.

### **31. Claim 29**

Since claim 29 is dependent upon independent claim 19, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 19, *supra*.

Claim 29 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a sequential function chart.” Since claim 29 depends from claim 19, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a sequential function chart.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 29, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 29, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 29. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 29.

### **32. Claim 30**

Since claim 30 is dependent upon claim 25, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 25, *supra*.

Claim 30 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a flowchart language.” Since claim 30 ultimately depends from claim 19, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a flowchart

language.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 30, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 30, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 30. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 30.

### 33. Claim 31

Since claim 31 is dependent upon claim 25, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 25, *supra*.

Claim 31 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a ladder logic language.” Since claim 31 ultimately depends from claim 19, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller”

and thus cannot teach “wherein the graphical programming language comprises a ladder logic language.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 31, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 31, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 31. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 31.

#### **34. Claim 32**

Since claim 32 is dependent upon claim 25, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 25, *supra*.

Claim 32 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a function block diagram language.” Since claim 32 ultimately depends from claim 19, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial

automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a function block diagram language.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 32, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 32, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 32. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 32.

### 35. Claim 33

Since claim 33 is dependent upon claim 25, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 25, *supra*.

Claim 33 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a sequential function chart.” Since claim 33 ultimately depends from claim 19, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a



programmable logic controller". The applied portions of Dole do not teach, "industrial automation computer program" that is "adapted for controlling a programmable logic controller" and thus cannot teach "wherein the graphical programming language comprises a sequential function chart."

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 33, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or
3. "combine [those teachings] in the way that would produce the claimed invention".

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 33, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 33. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 33.

### 36. Claim 34

Since claim 34 is dependent upon independent claim 19, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 19, *supra*.

Claim 34 states, *inter alia*, yet the applied portions of Dole fail to teach, "converting the markup language version of the industrial automation computer program to the internal representation." Since claim 34 depends from claim 19, the "industrial automation computer

program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “converting the markup language version of the industrial automation computer program to the internal representation.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 34, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 34, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 34. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 34.

### **37. Claim 35**

Since claim 35 is dependent upon independent claim 19, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 19, *supra*.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 35, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 35, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 35. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 35.

### 38. Claim 36

Regarding claim 36, the present Office Action fails to present legally sufficient evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Instead, regarding selected proffered combinations, the present Office Action presents a logically convoluted argument that recites, at Pages 5-6, *inter alia*:

*it would have been obvious for one of ordinary skill in the art at the time the invention was made to apply the circuit synthesis tool, control data communication and web markup conversion as taught by Dole so that the target to be designed would be a control logic of a integrated chip having control functionality of a PLC such as taught by Hoskins. One would be motivated to do so because the internet based control applied to industrial design and control as*

*endeavor by both Dole and Hoskins can enable simultaneous control from multiple developers as set forth above, and using this framework as by Hoskins would enable industrial logic as perceived by Dole to target for design of PLC as one of circuitries as endeavored by Dole based on the facilitated communication as set by Hoskins.*

Applicant respectfully submits that the reasoning of this argument, as well as that leading up to it, is logically convoluted and largely unparseable. Applicant respectfully asks, where does the prior art provide any “suggestion, motivation, or teaching **in the prior art** that would have led a person of ordinary skill in the art to”:

1. “select the reference[]” of Dole for combination with Hoskins;
2. “select the teachings of” Dole for combination with Hoskins; and
3. “combine [those teachings] in the way that would produce the claimed invention”?

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 36. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 36.

### **39. Claim 37**

Since claim 37 is dependent upon independent claim 36, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 36, *supra*.

Claim 37 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the markup language is XML.” Since claim 37 depends from claim 36, the “markup language” is stated in the context of “a markup language version of the industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the markup language is XML.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 37, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 37, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 37. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 37.

#### 40. Claim 38

Since claim 38 is dependent upon independent claim 36, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 36, *supra*.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 38, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been

presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 38, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 38. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 38.

#### 41. Claim 39

Claim 39 recites, *inter alia*, “industrial automation graphical programming language code, the graphical programming language code comprising an editor adapted to permit the user to create an industrial automation computer program using graphical elements, the industrial automation computer program being stored in memory in an internal representation during execution, **the industrial automation computer program adapted for controlling a programmable logic controller; and computer program code adapted for converting the industrial automation computer program, stored in memory in the internal representation, from the internal representation to a markup language version of the industrial automation computer program**”. The applied portions of the relied upon references do not teach a “industrial automation graphical programming language code, the graphical programming language code comprising an editor adapted to permit the user to create an industrial automation computer program using graphical elements, the industrial automation computer program being stored in memory in an internal representation during execution, **the industrial automation computer program adapted for controlling a programmable logic controller; and computer program code adapted for converting the industrial automation computer program, stored in memory in the internal representation, from the internal representation to a markup language version of the industrial automation computer program**”.

The present Office Action relies upon “col. 7, lines 26-42; Fig. 10;” and “col. 16, lines 10-47; Fig. 13” as allegedly teaching “computer program code adapted for **converting the industrial automation computer program, stored in memory in the internal representation,**



from the internal representation to a markup language version of the industrial automation computer program”. Each of Fig. 10, col. 16, lines 10-47, and Fig. 13 are presented, *supra*, regarding the traversal of claim 1. Dole allegedly recites, at col. 7, lines 26-42:

*[t]he interface and flow control tool encompasses HTML pages and CGI scripts. The HTML pages include input forms for defining methodologies, including steps of methodologies, as well as chip and block home pages and executable methodologies. The CGI scripts receive and act on data input to the input forms to create files defining methodologies, chips and blocks, and executable methodologies attached to chips and blocks. The CGI scripts also cause execution of electronic design automation (EDA) tools residing on the compute servers (illustrated in FIG. 2).*

*Accordingly, the design server contains files 303. The files are created by the CGI scripts in response to input to the input forms applying new methodologies, and responsive to input to input forms attaching methodologies to chips or blocks. In addition, in one embodiment the files include files and libraries comprising design data formed as the result of the execution of the EDA tools.*

Applicant respectfully asks, where does this relied upon portion of Dole teach:

1. “converting” anything?
2. “converting” anything to “a markup language version”?
3. “an internal representation [of an industrial automation control program adapted for controlling a programmable logic controller]”?...
4. **“converting the industrial automation computer program, stored in memory in the internal representation, from the internal representation to a markup language version of the industrial automation computer program”?**

Applicant respectfully submits that at least this claimed subject matter is absent from the applied portions of Dole. The applied portions of Hoskins do not overcome at least these deficiencies of Dole.

Thus, even if there were motivation or suggestion to modify or combine the applied

portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, as **attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

Further, the present Office Action fails to present legally sufficient evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Instead, regarding selected proffered combinations, the present Office Action presents a logically convoluted argument that recites, at Pages 5-6:

*it would have been obvious for one of ordinary skill in the art at the time the invention was made to apply the circuit synthesis tool, control data communication and web markup conversion as taught by Dole so that the target to be designed would be a control logic of a integrated chip having control functionality of a PLC such as taught by Hoskins. One would be motivated to do so because the internet based control applied to industrial design and control as endeavor by both Dole and Hoskins can enable simultaneous control from multiple developers as set forth above, and using this framework as by Hoskins would enable industrial logic as perceived by Dole to target for design of PLC as one of circuitries as endeavored by Dole based on the facilitated communication as set by Hoskins.*

Applicant respectfully submits that the reasoning of this argument, as well as that leading

up to it, is logically convoluted and largely unparseable. Applicant respectfully asks, where does the prior art provide any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the reference[]” of Dole for combination with Hoskins;
2. “select the teachings of” Dole for combination with Hoskins; and
3. “combine [those teachings] in the way that would produce the claimed invention”?

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 39. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 39.

#### 42. Claim 40

Since claim 40 is dependent upon independent claim 39, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 39, *supra*.

Claim 40 states, *inter alia*, yet the applied portions of Dole fail to teach, “converting the industrial automation computer program from the markup language version of the industrial automation computer program to the internal representation.” Since claim 40 depends from claim 39, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “converting the industrial automation computer program from the markup language version of the industrial automation computer program to the internal representation.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 40, of any “suggestion, motivation, or teaching in the prior art

that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 40, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 40. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 40.

#### 43. Claim 41

Claim 41 recites, *inter alia*, “creating a schema defining a content model for a markup language version of an industrial automation computer program **converted from a graphical language version of the industrial automation computer program**, the industrial automation computer program adapted for controlling a programmable logic controller”. The present Office Action alleges that this claimed subject matter is taught by Dole at “synthesis tool, behavioral model, schematic – col. 12, lines 5-48; DAG - col. 16, lines 52-55; col. 17, lines 22-27; Fig. 23; step 405-407 - Fig. 9; col. 12, lines 42-55”.

Yet, Dole allegedly recites, at col. 12, lines 5-48:

*[a]fter the specification phase, a series of steps 405, 407, 409, 411, 413, 415 are carried out that result in a physical design of the circuit. Each step in the design process may require one or more iterations until that stage of the design has been satisfactorily completed. Also, after two or more steps are completed, it may be realized that the cumulative solution obtained at the stage is inadequate and must*

*be reiterated. Tracking of the design process is therefore sometimes difficult. The problems of tracking progress of the design process is compounded when design teams implementing each task are located in remote locations, making communications difficult.*

*Step 405 of the process is the generation of a register transfer level (RTL) model. Generation of the RTL model is required if no preexisting block exists, such as when a block must be designed from scratch. The RTL model represents the block behavior of the design. The RTL model is a synthesizable behavioral model that is translated into a structural model providing a logic level description of the system. The generation of the RTL model is accomplished using methodologies previously selected.*

*Step 407 of the process is the synthesis of the circuitry necessary to implement the logic functions of the RTL model. The designer synthesizes the circuit using a methodology including a synthesis tool. The methodology corresponds to one or some of the methodologies previously selected. An analysis program optionally may be executed as part of this step, with the analysis program used to verify that the output of the synthesis step behaves in accordance with the product specification. The use of the analysis program is generally specified as a separate methodology, although it may be a sub-methodology or step of the synthesis methodology.*

*Step 409 of the process is simulation of the overall design. All of the components of the design are assembled and a simulation is run. The simulation tool, test vector generation, and other matters are determined by the selected methodologies. The design is adjusted until satisfactory simulation results are obtained. At this point in the design cycle, a satisfactory design consists of a schematic that contains components such as transistors that may be built on the integrated circuit, and that when simulated using appropriate models give appropriate results. This model generally does not take into consideration the*

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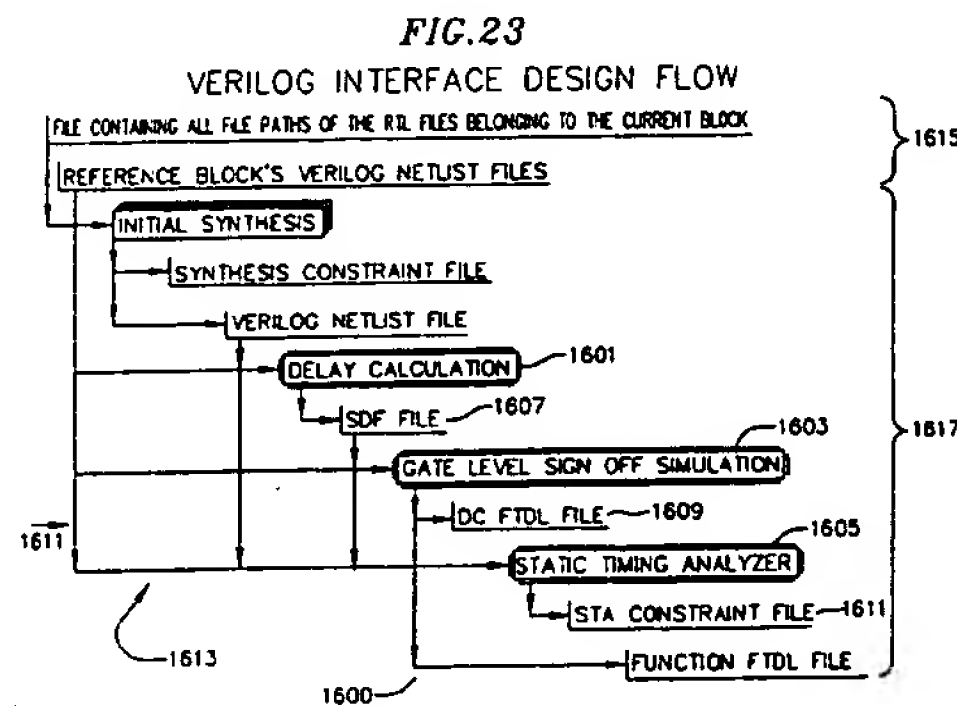
*physical layout of these components on the integrated circuit substrate.*

Further, Dole allegedly recites, at col. 1, lines 52-55, “[a]ccordingly, each of the blocks must be supported by a testing tool used to verify the functionality of the integrated circuit as a whole.”

Dole allegedly recites, at col. 17, lines 22-27:

*[n]ext, a converter with XML parsing capability is used in step 523 to convert the captured design methodology into multiple files including info and index files as well as a directed acyclic graph (DAG) file.*

Dole allegedly illustrates at FIG. 23:



Dole allegedly illustrates at FIG. 9:

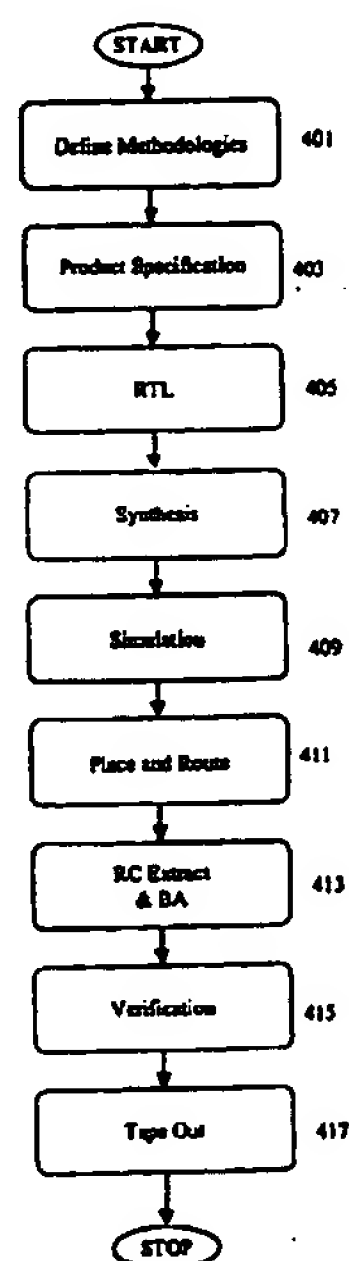


FIG. 9



Dole allegedly recites, at col. 12, lines 42-55:

*[a]t this point in the design cycle, a satisfactory design consists of a schematic that contains components such as transistors that may be built on the integrated circuit, and that when simulated using appropriate models give appropriate results. This model generally does not take into consideration the physical layout of these components on the integrated circuit substrate.*

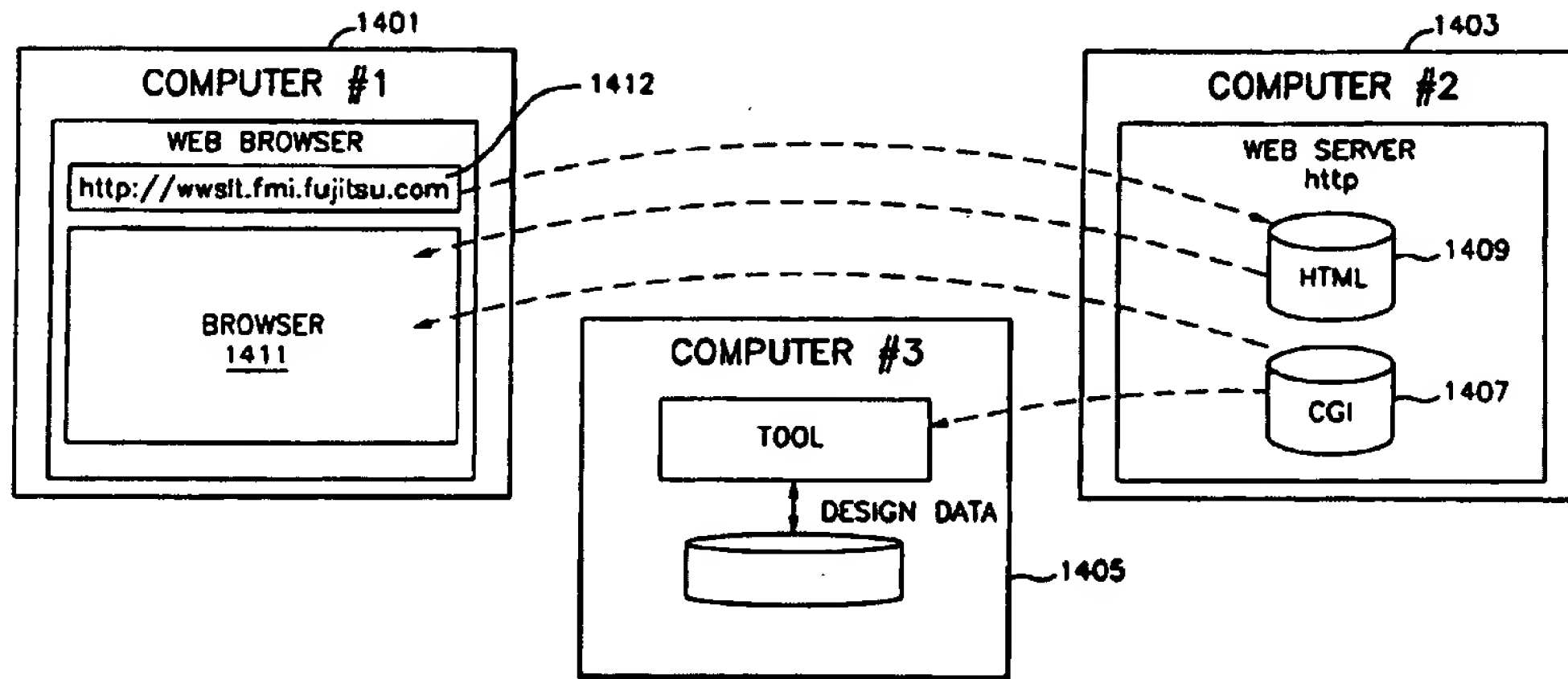
*Step 411 of the process is placing the components of the design on the substrate and routing of signal to and from the components. Place and route is generally accomplished using one or more place and route tools. The place and route tools used are specified by the selected methodologies. The output of the place and route is a representation physical layout of the integrated circuit as it is built.*

Applicant respectfully asks for an explanation regarding how and where any of these applied portions of Dole teach a “creating a schema defining a content model for a markup language version of an industrial automation computer program **converted from a graphical language version of the industrial automation computer program**, the industrial automation computer program adapted for controlling a programmable logic controller”. Applicant respectfully submits that no applied portion of any relied upon reference teaches at least this claimed subject matter.

Claim 41 recites “**posting the schema** for access over a network by application developers.”

The present Office Action relies upon “Fig. 5; Fig. 13” as allegedly teaching “**posting the schema** for access over a network by application developers”. FIG. 13 is presented, *supra*, regarding the traversal of claim 1. Dole allegedly illustrates, at FIG 5:

FIG. 5



Applicant respectfully asks, where do either of the relied upon portions of Dole teach “**posting the schema** for access over a network by application developers”? Applicant respectfully submits that at least this claimed subject matter is absent from the applied portions of Dole. The applied portions of Hoskins do not overcome at least these deficiencies of Dole.

Regarding this argument, previously presented in the Office Action Reply dated 24 July 2006, the present Office Action asserts, at Page 10:

*[i]t is clear that a DTD is one representation which set forth the hierarchy of construct requirements needed to generate the content implementing an extensible markup language. The DTD as cited reads on this schema in light of the XML representation by Dole ( refer to section J); and in light of HTML based communications, exchanging markup document accompanied of a form of DTD( a XML corresponding schema) would be integral to the use of XML form of message ( Dole: Fig. 5) or file transmission. The arguments are largely off the mark in exposing why a DTD cannot read on a schema.*

Applicant respectfully submits that this assertion fails to cure the deficiencies of the references in establishing a *prima facie* case of obviousness regarding claim 41. The present Office Action fails to indicate that the “DTD” alleged to read on the claimed “schema” defines “a content model for a markup language version of an industrial automation computer program

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**converted from a graphical language version of the industrial automation computer program, the industrial automation computer program adapted for controlling a programmable logic controller”** The assertion further fails to demonstrate that the applied portions of Dole teach **“posting the schema for access over a network by application developers.”**

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

Further, the present Office Action fails to present legally sufficient evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”; or
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Instead, regarding selected proffered combinations, the present Office Action presents a logically convoluted argument that recites, at Pages 5-6, *inter alia*:

*it would have been obvious for one of ordinary skill in the art at the time the invention was made to apply the circuit synthesis tool, control data communication and web markup conversion as taught by Dole so that the target to be designed would be a control logic of a integrated chip having control functionality of a PLC such as taught by Hoskins. One would be motivated to do so because the internet based control applied to industrial design and control as endeavor by both Dole and Hoskins can enable simultaneous control from*

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*multiple developers as set forth above, and using this framework as by Hoskins would enable industrial logic as perceived by Dole to target for design of PLC as one of circuitries as endeavored by Dole based on the facilitated communication as set by Hoskins.*

Applicant respectfully submits that the reasoning of this argument, as well as that leading up to it, is logically convoluted and largely unparseable. Applicant respectfully asks, where does the prior art provide any “suggestion, motivation, or teaching **in the prior art** that would have led a person of ordinary skill in the art to”:

1. “select the reference[]” of Dole for combination with Hoskins;
2. “select the teachings of” Dole for combination with Hoskins; and
3. “combine [those teachings] in the way that would produce the claimed invention”?

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 41. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 41.

#### **44. Claim 42**

Since claim 42 is dependent upon independent claim 41, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 41, *supra*.

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. *See* MPEP 707.07(d). For example, dependent claim 42 states, *inter alia*, “wherein the schema is an XML schema”. The omnibus rejection of claim groups by the references relied upon in the Office Action makes no mention of “wherein the schema is an XML schema”, and fails to point out where, in any of the references, that limitation is disclosed. In view of the failure of the Office Action to satisfy the requirements of MPEP 707.07(d), the

next Office Action should not be final.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 42, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 42, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 42. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 42.

#### 45. Claim 43

Since claim 43 is dependent upon independent claim 41, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 41, *supra*.

Claim 43 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the graphical programming language comprises a flowchart language.” Since claim 43 depends from claim 41, the “graphical programming language” creates an “internal representation” of an “industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the graphical programming language comprises a flowchart language.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied

portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 43, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 43, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 43. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 43.

#### 46. Claim 44

The present Office Action fails to present legally sufficient evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Instead, regarding selected proffered combinations, the present Office Action presents a logically convoluted argument that recites, at Pages 5-6, *inter alia*:

*it would have been obvious for one of ordinary skill in the art at the time the invention was made to apply the circuit.synthesis tool, control data*



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*communication and web markup conversion as taught by Dole so that the target to be designed would be a control logic of a integrated chip having control functionality of a PLC such as taught by Hoskins. One would be motivated to do so because the internet based control applied to industrial design and control as endeavor by both Dole and Hoskins can enable simultaneous control from multiple developers as set forth above, and using this framework as by Hoskins would enable industrial logic as perceived by Dole to target for design of PLC as one of circuitries as endeavored by Dole based on the facilitated communication as set by Hoskins.*

Applicant respectfully submits that the reasoning of this argument, as well as that leading up to it, is logically convoluted and largely unparseable. Applicant respectfully asks, where does the prior art provide any “suggestion, motivation, or teaching **in the prior art** that would have led a person of ordinary skill in the art to”:

1. “select the reference[]” of Dole for combination with Hoskins;
2. “select the teachings of” Dole for combination with Hoskins; and
3. “combine [those teachings] in the way that would produce the claimed invention”?

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 44. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 44.

#### **47. Claim 45**

Since claim 45 is dependent upon independent claim 44, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 44, *supra*.

Claim 45 states, *inter alia*, yet the applied portions of Dole fail to teach, “transmitting the

markup language version of the modified industrial automation computer program over the network in connection with a network address corresponding to the client system, thereby causing the transmitted, modified, markup language version of the industrial automation computer program to be received by the client system.” Since claim 45 depends from claim 44, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “transmitting the markup language version of the modified industrial automation computer program over the network in connection with a network address corresponding to the client system, thereby causing the transmitted, modified, markup language version of the industrial automation computer program to be received by the client system.”

The applied portions of the remaining relied upon references fail to cure at least these deficiencies of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 45, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 45, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 45. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 45.

**48. Claim 46**

Since claim 46 is dependent upon claim 45, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 45, *supra*.

Claim 46 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the step of transmitting the accessed, markup language version of the industrial automation computer program over the network comprises sending an electronic mail message.” Since claim 46 ultimately depends from claim 44, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the step of transmitting the accessed, markup language version of the industrial automation computer program over the network comprises sending an electronic mail message.”

The applied portions of the remaining relied upon references fail to cure at least these deficiencies of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 46, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 46, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 46. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 46.

A true and correct copy of the present amendment is being submitted to the Examiner.

**49. Claim 47**

Since claim 47 is dependent upon claim 45, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 45, *supra*.

Claim 47 states, *inter alia*, yet the applied portions of Dole fail to teach, “transmitting the markup language version of the industrial automation computer program over the network via hypertext transfer protocol.” Since claim 47 ultimately depends from claim 44, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “transmitting the markup language version of the industrial automation computer program over the network via hypertext transfer protocol.”

The applied portions of the remaining relied upon references fail to cure at least these deficiencies of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 47, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 47, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 47. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 47.

**50. Claim 48**

Since claim 48 is dependent upon independent claim 44, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 44, *supra*.

Claim 48 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the markup language version of the industrial automation computer program comprises XML.” Since claim 48 depends from claim 44, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the markup language version of the industrial automation computer program comprises XML.”

The applied portions of the remaining relied upon references fail to cure at least these deficiencies of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 48, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 48, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 48. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 48.

**51. Claim 49**

Since claim 49 is dependent upon independent claim 44, Applicant respectfully

incorporates by reference each traversal of the present Office Action regarding claim 44, *supra*.

Claim 49 states, *inter alia*, yet the applied portions of Dole fail to teach, “transmitting the accessed, markup language version of the industrial automation computer program over the network in connection with a network address corresponding to the second client system, thereby causing the transmitted, markup language version of the industrial automation computer program to be received by the second client system.” Since claim 49 depends from claim 44, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “transmitting the accessed, markup language version of the industrial automation computer program over the network in connection with a network address corresponding to the second client system, thereby causing the transmitted, markup language version of the industrial automation computer program to be received by the second client system.”

The applied portions of the remaining relied upon references fail to cure at least these deficiencies of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 49, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 49, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 49. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 49.

Respectfully submitted,



**52. Claim 50**

Since claim 50 is dependent upon independent claim 49, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 49, *supra*.

Claim 50 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the client system is configured to reconvert the markup language version of the industrial automation computer program to a first internal representation, and wherein the second client system is coupled to the network, the second client configured to reconvert the markup language version of the industrial automation computer program to a second internal representation.” Since claim 49 ultimately depends from claim 44, the “industrial automation computer program” is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the client system is configured to reconvert the markup language version of the industrial automation computer program to a first internal representation, and wherein the second client system is coupled to the network, the second client configured to reconvert the markup language version of the industrial automation computer program to a second internal representation.”

The applied portions of the remaining relied upon references fail to cure at least these deficiencies of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 50, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 50, even if such a combination would produce the claimed subject matter (a premise respectfully traversed

by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 50. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 50.

### 53. Claim 51

The present Office Action fails to present legally sufficient evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Instead, regarding selected proffered combinations, the present Office Action presents a logically convoluted argument that recites, at Pages 5-6:

*it would have been obvious for one of ordinary skill in the art at the time the invention was made to apply the circuit synthesis tool, control data communication and web markup conversion as taught by Dole so that the target to be designed would be a control logic of a integrated chip having control functionality of a PLC such as taught by Hoskins. One would be motivated to do so because the internet based control applied to industrial design and control as endeavor by both Dole and Hoskins can enable simultaneous control from multiple developers as set forth above, and using this framework as by Hoskins would enable industrial logic as perceived by Dole to target for design of PLC as one of circuitries as endeavored by Dole based on the facilitated communication as set by Hoskins.*

Applicant respectfully submits that the reasoning of this argument, as well as that leading up to it, is logically convoluted and largely unparseable. Applicant respectfully asks, where does the prior art provide any “suggestion, motivation, or teaching in the prior art that would have

led a person of ordinary skill in the art to”:

1. “select the reference[]” of Dole for combination with Hoskins;
2. “select the teachings of” Dole for combination with Hoskins; and
3. “combine [those teachings] in the way that would produce the claimed invention”?

Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 51. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 51.

#### **54. Claim 52**

Since claim 52 is dependent upon independent claim 51, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 51, *supra*.

Claim 52 states, *inter alia*, yet the applied portions of Dole fail to teach, “wherein the markup language is XML.” Since claim 52 depends from claim 51, the “markup language” is stated in the context of “a markup language version of the industrial automation computer program” that is “adapted for controlling a programmable logic controller”. The applied portions of Dole do not teach, “industrial automation computer program” that is “adapted for controlling a programmable logic controller” and thus cannot teach “wherein the markup language is XML.”

The applied portions of Hoskins fail to cure at least these deficiencies of the applied portions of Dole.

Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 52, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

it is respectfully requested that the claim be maintained in the patent.

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Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 52, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant). The present Office Action fails to substantively respond to this persuasive argument and again fails to provide any evidence of any suggestion or motivation to combine Hoskins with Dole to arrive at the claimed subject matter.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 52. For at least these reasons, Applicant respectfully requests a withdrawal of the rejection of claim 52.

#### **IV. The Present Office Action Fails to Respond to All of Applicant's Arguments**

A proper Office Action must be complete as to all matters, must provide a clear explanation of all actions taken, and must answer in detail the substance of each of Applicant's submitted arguments. *See* MPEP 707.07(f).

In response to an Office Action dated 16 June 2006, Applicant filed a proper Reply on 24 July 2006, which is incorporated herein by reference. The present Office Action fails to substantively address any of the traversals of claims 1-52 presented in that Reply.

For example, in the 24 July 2006 Reply, Applicant respectfully traversed the rejection of independent claim 1, upon which each of claims 2-18 depend, by presenting claimed subject matter comprised therein that Applicant does not find in the applied portions of the relied upon references. Applicant presented each of the applied portions of the relied upon references and asked specifically how and where each taught the claimed subject matter that Applicant believes that they do not teach. Applicant further pointed out evidentiary deficiencies in the purported suggestion or motivation to combine Dole with Hoskins to arrive at certain claimed subject matter.

The present Office Action failed to address the arguments presented regarding a lack of suggestion or motivation to combine references in any manner whatsoever. Further, rather than provide a substantive response to attempt to demonstrate that the subject matter that Applicant

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believes to be missing is actually in the applied portions of the relied upon references, the present Office Action merely asserts, at Page 15:

*[t]he rejection has set forth mappings from Dole to each of the portion of the above recited subject matter; and it is deemed superfluous (emphasis added) here to again paste the entire text of rejection in terms of mapping Dole's applied parts to each of the above limitations and where Dole teachings require combination with Hoskins. The examiner has -with best effort- interpreted each of the claimed features (e.g. if there is unclear teaching from the claim, a claim indefiniteness type of rejection would be set forth) and correspondingly established parts of Dole that can reasonably be analogized to each feature (refer to rejection); and Applicant's rebut thereto is equally expected to be presented in a parallel manner. That is, for each of the Examiner's mappings (i.e. Dole's cited parts), Applicant has to pinpoint specific portions and any corresponding deficiency thereof. Until Applicant detects specific in each of the cited parts with respect to specific language used in claim 1, the above questions by Applicant can only be viewed as a attempt to discredit the rejection, but which amounts to an allegation put in form of questions that can be deemed inappropriate in terms of a prima facie rebut to the Office Action. It is observed that should there be some flaw in the Office Action such as to failing to establish the initial burden (to exhibit how each feature has been met), it also incumbent to the Applicant in return to point out such Office Action's deficiency in terms of showing very specific cited parts of Dole (that is each of them if possible) which are deemed improper; and correspondingly explain their weakness or deficiencies with regard to the corresponding claimed feature. The rebut of the Applicant amounts to: (i) repeat the claimed subject matter, (ii) reciting a portion in Dole discussing on evolving of markup language and HTML with no explanation whatsoever about the construct or language of the Rejection commensurate to a clear*

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*deficiency in addressing a particular feature, then (iii) asking where in Dole each of the parts of the claimed features are shown, The addressing of the 'converting ... logic controller' limitation has been set forth in 2 parts, the first part is the markup language part mapped with Dole, the second in the automation program in industry of PLC, fulfilled with the combination Dole/Hoskins. And to rebut this, the applicant has insufficiently attacked each such part of the rejection. For instance, until specifics on each of the Dole's cited parts are identified as faulty, it is deemed that a possible rebut (against Applicant's argument if any) cannot reasonably be effectuated for the lack of specific substance as observed above. For example, Applicants appears to not observe the burden of providing what is expected of a proper prima facie type of rebut against the rejection, and this includes Applicant's omission in pointing out how Hoskins' teachings as combined with Dole would render the rationale of obviousness improper. Thus, the arguments for lacking prima facie specificity are insufficient to overcome the rejection*

This statement from the present Office Action fails to address the substance of Applicant's arguments. Applicant contends, contrary to the assertion of the present Office Action, that at least a portion of the subject matter of claim 1 is not taught by the applied portions of the relied upon references. Applicant presented evidence and a series of questions in order to demonstrate the deficiencies of the 16 June 2006 Office Action. Applicant respectfully submits that a substantive response by the USPTO in the present Office Action would not have been superfluous and was required by the MPEP. Neither the present Office Action nor the 16 June 2006 Office Action establish a *prima facie* case of obviousness regarding any claim, including claim 1. For at least this reason, the burden remains on the USPTO to provide such a rejection. Applicant has no further burden. Applicant respectfully submits that the present Office Action Reply, as well as the Office Action Reply dated 24 July 2006, each demonstrates that no *prima facie* case of obviousness has been established. Applicant respectfully submits that the complete



failure of the present Office Action to address the substance of Applicant's arguments in detail fails to comply with the requirements of MPEP 707.07(f).

As another example, in traversing a rejection of claim 5, Applicant presented the following argument that stands unopposed in the present Office Action:

*Since claim 5 is dependent upon independent claim 1, Applicant respectfully incorporates by reference each traversal of the present Office Action regarding claim 1, supra.*

*Claim 5 recites, yet the present Office Action fails to allege that any of the applied portions of the relied upon references teaches "representing the retrieved industrial automation computer program as a corresponding graphical programming language version on a computer display."*

*Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, as attempted to be modified and/or combined, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a prima facie case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.*

*Further, the present Office Action fails to present any evidence whatsoever, regarding the additional subject matter of claim 5, of any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":*

- 1. "select the references";*
- 2. "select the teachings of [the] separate references"; or*

3. “combine [those teachings] in the way that would produce the claimed invention”.

*Applicant respectfully submits that no legally sufficient evidence has been presented regarding a suggestion or motivation to combine Dole with Hoskins regarding claim 5, even if such a combination would produce the claimed subject matter (a premise respectfully traversed by Applicant).*

*Thus, the present Office Action fails to establish a prima facie case of obviousness regarding claim 5. Accordingly, Applicant respectfully requests a withdrawal of the rejection of claim 5.*

The present Office Action fails to respond substantively to this previously presented and persuasive argument. The present Office Action merely asserts, at Page 18:

*[a]s for claims 2-18, Applicant has submitted (Appl, Rmrks, pg. 26-37) the same pattern of required steps, i.e. select the references, select the teachings; combine ... that would produce the claimed invention; all of which deemed not commensurate (or in direct relevance) with any of the Dole's cited parts to address the claims. Again, there is no specific material by the Office Action being pointed to here in order for the Examiner to commensurately provide a counter argument based thereupon. A claim comprises features and for each, the Examiner deems that an initial burden of setting forth a prima facie case of rejection has been established and it is Applicant's burden now to point out (and doing so, very precisely in sufficient detail) which part of such Action has lacked a proper teaching that would meeting a very specific claimed feature. The above uncorrelated remarks by Applicants are not proper arguments to legitimately negate the grounds of rejection; and are deemed not somewhat misplaced in order to overcome the rejections of the above claims.*

Applicant respectfully submits that the Reply of 24 July 2006 pointed to “specific material by the Office Action” requiring a substantive response. No substantive response was provided in the present Office Action. Further, Applicant demonstrated that no *prima facie*

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obviousness was established regarding claim 5 and that the 16 June 2006 Office Action failed to meet that burden. The present Office Action completely failed to rebut this argument or provide such a *prima facie* rejection of at least claim 5.

Applicant further requests clarifications regarding how any of the remarks comprised by the Reply dated 24 July 2006 are “uncorrelated”. What are the remarks alleged to be “uncorrelated” with? What is meant by the phrase “uncorrelated remarks”? What legal basis or factual basis does the present Office Action have for asserting that the arguments presented in the traversal of claim 5 (or any of claims 1-52 for that matter) “are not proper arguments to legitimately negate the grounds of rejection”? What is meant by the seemingly internally inconsistent clause “are deemed not somewhat misplaced in order to overcome the rejections of the above claims”?

As still another example, the Office Action Reply dated 24 July 2006 also demonstrated that the Office Action dated 16 June 2006 failed to provide a proper suggestion or motivation for combining the applied portions of Hoskins with the applied portions of Dole to arrive at the claimed subject matter for each of claims 2-18. The response of the present Office Action to these persuasive arguments was limited to the passage quoted, *supra*, regarding those claims. Rather than provide the required response to the substance of Applicant’s arguments, the present Office Action merely attempts to mischaracterize and denigrate those arguments. For at least these reasons, the present Office Action fails to comply with the requirements of MPEP 707.07(f) regarding the rejections of each of claims 1-18.

As yet another example, the Reply dated 24 July 2006 traversed the failure of the Office Action dated 16 June 2006 to provide a proper suggestion or motivation for combining the applied portions of Hoskins with the applied portions of Dole to arrive at the claimed subject matter for each of claims 20-35. Again, rather than provide the required substantive response, the present Office Action merely stated:

*As for claims 20-35, Applicant has submitted (Appl. Rmrks, pg. 39-49) the same pattern of required steps, i.e. select the references, select the teachings; combine ... that would produce the claimed invention; all of which not*

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*commensurate with any of the Dole's cited parts to address the claims.*

*These remarks would be referred back to section E.*

Once again, rather than provide the required substantive response to the substance of Applicant's arguments, the present Office Action merely attempts to mischaracterize and denigrate those arguments. For at least these reasons, the present Office Action fails to comply with the requirements of MPEP 707.07(f) regarding the rejections of each of claims 20-35.

The present Office Action similarly fails to answer the substance of Applicant's argument presented in the Office Action Reply of 24 July 2006 regarding each of claims 36-52. For at least these reasons, Applicant respectfully requests the withdrawal of each of the rejections of claims 1-52.

**V. The Finality of the Office Action is Improper, Premature, and Should Be Withdrawn**

A proper Office Action must be complete as to all matters, must provide a clear explanation of all actions taken, and must answer in detail the substance of each of Applicant's submitted arguments. *See* MPEP 707.07(f).

Although a substantive response to the 16 June 2006 Office Action was submitted, including arguments explaining why the applied references did not render obvious the subject matter of each of claims 1-52, those arguments have not been fully addressed in the presently outstanding 23 October 2006 Office Action. Accordingly, the previous response filed 24 July 2006 is incorporated by reference herein, Applicant respectfully submits that the finality of the 23 October 2006 Office Action is improper, and Applicant respectfully requests that the finality of the 23 October 2006 Office Action be withdrawn.

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**CONCLUSION**

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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Date: 19 December 2006

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